IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 935 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DILIPBHAI RAMBHAI PATEL

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 935 of 2000

MR SHIRISH JOSHI for Petitioner No. 1

MR VT ACHARYA for Respondent No. 1-2

MS RV ACHARYA for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/07/2001

ORAL JUDGEMENT

Rule. Ms. Rohini Acharya, learned counsel appearing for the respondents waives service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner is challenging the order dated 31-8-1999 (Annexure E) passed by the Dy. General Manager (P & IR), Surat of the Gujarat Electricity Board and also praying for direction to the respondents to release the payment due to the petitioner forthwith.

3. The petitioner was assigned certain work by the respondents in the year 1992. An accident took place on 12-1-1992 which resulted into serious injuries to an employee of the petitioner. Ultimately, the injured succumbed to the injuries on 19-4-1992. The heirs of the deceased filed Workmen Compensation Case No.55 of 1993 before the Labour Court at Bharuch. By the impugned communication dated 31-8-1999 (Annexure E), the Dy. General Manager informed the Superintending Engineer at Bharuch that since the above case was pending before the Labour Court, the Superintending Engineer was not to release any payment to the petitioner in respect of the concerned contract till further instructions from the Zonal Office, Surat. The petitioner has filed this petition contending that the negligence was on the part of the officers/employees of the Board and not on the part of the petitioner or his employees. It is further submitted that the work was completed long back in the year 1992 itself but a large sum of money is being unnecessarily and illegally withheld for no fault of the petitioner.

4. On the other hand, Ms. Rohini Acharya, learned counsel appearing for the respondents has relied on the said communication dated 31-8-1999 for contending that ultimately if the petitioner or his employees are held to be negligent and they are held to be liable to pay the compensation to the heirs of the deceased, any payment to the petitioner at this stage would jeopardise the claim of the respondent-Board before the Labour Court and also will make it difficult for the Board to make recovery from the petitioner. Ms. Acharya has further relied on the reply affidavit dated 9-7-2001 of M.T. Parmar, Personnel Officer of the respondent-board and submitted that as per the contract under which the work in question was assigned to the petitioner, an amount of 5% of the contract work is to be retained by the G.E.B. as security deposit and that such security deposit is not to be returned to the contractor unless a work completion certificate is produced by the contractor and that on production of such work completion certificate only the final bill and security deposit are paid by the Board. It is further contended that if the petitioner has any grievance, the petitioner has an alternative remedy for a

monetary claim.

5. Having heard the learned counsel for the parties, it appears to the Court that the interests of justice would be served if the following directions are issued and it is directed accordingly -

(i) in exercise of suo motu power under Article 227 of the Constitution, the Labour Court, Bharuch is directed to hear and decide Workmen Compensation Case No.55 of 1993 as expeditiously as possible and in any case by 30th September, 2001. This direction is given on the assurances coming from the learned counsel for the petitioner as well as the learned counsel for the G.E.B. that their respective clients and their counterparts before the Labour Court, Bharuch will cooperate for expeditious hearing of the Workmen Compensation Case.

(ii) After the petitioner submits the work completion certificate for the work entrusted to the petitioner in 1992, the respondents shall not withhold any amount exceeding Rs.2 lacs on the basis of the pendency of the Workmen Compensation Case No.55 of 1993 before the Labour Court at Bharuch.

(iii) After the aforesaid case is decided, the respondents shall consider the pending claims of the petitioner in respect of the aforesaid contract within one month from the date of the decision in the Workmen Compensation Case, and if any amount is found due and payable by the respondents to the petitioner as per the aforesaid exercise, the petitioner shall be entitled to interest on such amount at such rate as may be contemplated by the agreement in question.

(iv) In case the amount payable to the petitioner is not paid within one month from the date of service of the award of the Labour Court in the above Workmen Compensation Case and the date of submission of the completion certificate for the above work entrusted in 1992, the respondents shall pay the petitioner interest at the rate of 15% p.a. from the date of expiry of one month period after the award of the Labour Court.

6. The petition is accordingly disposed of in terms

of the aforesaid directions. Rule is made absolute to the aforesaid extent.

The writ to be sent to the Labour Court, Bharuch forthwith. The petitioner shall also serve a copy of the writ on the Registrar Labour Court at Bharuch latest by 20th July, 2001. Rule is made absolute to the extent aforesaid.

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